



#131 Declaration
2/2/04
Docket No. 2112-342.1 US
W. Hant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
VEGLIANTE et al.

Serial No. 09/970,015

Filed: October 31, 2001

Title: FILM CUTTER ASSEMBLY

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Group Art Unit: 3724
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Examiner: HAMILTON, I.
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X

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF PAUL VEGLIANTE
SUBMITTED UNDER 37 CFR 1.132**

Sir:

I, Paul Vegliante, Executive Vice President of Operations of AEP Industries, Inc. (hereinafter referred to as "AEP"), assignee of the above-referenced application, with offices located at 125 Phillips Avenue, South Hackensack, New Jersey 07606, and an inventor of the above-described patent application, hereby declares as follows:

1. AEP has, since the year 2000, developed, advertised and sold film cutters incorporating the subject matter of the present application.
2. The products are marketed under the trademark ZIP SAFE, registered in the United States.
3. The commercial products correspond to the invention described and claimed in at least independent claim 1 of this patent application.
4. Approximately 1.75 Million ZIP SAFE units have been sold to date, starting in the year 2000. Because the product, as described in the claims of the present application, presents a very novel cling of plastic wrap to the film cutter to enable improved operation, it is

impossible to correlate our sales figures with a specific market share or drop in the sales of established competing products essentially all of which employ different structure. However, my inquiries to customers and potential customers lead me to believe that there has been a considerable decline in the demand for conventional film cutters although they were not willing to provide specific figures on sales.

5. Since early 2000, we at AEP have received numerous inquiries from potential customers and distributors from many countries, including Europe, Canada, Australia and New Zealand.

6. An important feature highly appreciated by the customers and users is the functioning of the device based on the cling of the plastic wrap to the cutter to enable the plastic wrap to be held in place before, after and during cutting of the plastic wrap.

7. A conventional film cutter such as the Castelli device described in U.S. Patent No. 3,199,394 is equipped with other means such as a pressure sensitive adhesive to hold the tape to the film cutter. The use of a pressure-sensitive adhesive will have disadvantages such as adherence of the adhesive to the film cutter and the incapability of use of the device for cutting plastic wrap not including a pressure sensitive adhesive.

8. Consequently, the film cutter of the present application having rails formed of a material which provides an attraction to plastic wrap has resulted in a device which is extremely easy to handle and functions in a safe and uncomplicated way.

9. It is my opinion that the product can be termed a commercial success, insofar as AEP is concerned and that this is solely and directly related to the claimed features of our device.

10. The commercial success was not the result of heavy promotion or advertising, nor consumption by purchasers normally tied to Applicant's or other business events extraneous to the merits of the invention set forth in the claims. There have been no "give aways" of the product defined by the claims, or any other inducements or concessions in selling the product defined by the claims. Instead, the commercial success was as a result of the advantageous physical and economic results attained by the subject matter set forth in the claims of the application, which I have read and understand.

11. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that

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these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing therefrom.

Dated: 1-29-04, 2004By: Paul Vegliante
PAUL VEGLIANTE